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9 *(Additional counsel information omitted)*

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SANTA ANA DIVISION**

14 ENTROPIC COMMUNICATIONS,
15 LLC,

16 Plaintiff,

17 v.
18

19 COMCAST CORPORATION;
20 COMCAST CABLE
21 COMMUNICATIONS, LLC; AND
22 COMCAST CABLE
23 COMMUNICATIONS
24 MANAGEMENT, LLC,

Defendants.

No. 2:23-cv-1049-JWH-KES (Lead Case)

No. 2:23-cv-1050-JWH-KES (Related Case)

No. 2:23-cv-1043-JWH-KES (Lead Case)

No. 2:23-cv-1048-JWH-KES (Related Case)

Assigned to Hon. John W. Holcomb

**COMCAST DEFENDANTS'
OBJECTION TO REFERRAL TO
SPECIAL MASTER**

INTRODUCTION

Comcast respectfully objects to the Court’s referral to the Special Master of Entropic’s motions to supplement and amend its complaints (2:23-cv-1043 (“1043”), Dkt. 273; 2:23-cv-1049 (“1049”), Dkt. 191). Comcast did not oppose Entropic’s Motion to Amend, so there is no dispute as to that motion. And the principal contested issue in Entropic’s Motions to Supplement—whether Entropic may plausibly plead willfulness based on its litigation conduct in these cases—is a question of law that must be decided by this Court. That dispositive threshold issue is already fully briefed in Comcast’s pending Motion to Dismiss (1043, Dkt. 256; 1049, Dkt. 180), and any consideration of that issue by the Special Master risks delay, confusion, and unnecessary effort and expense. Accordingly, Comcast respectfully requests that the Court withdraw the referrals to the Special Master or, in the alternative, delay them until after it has decided Comcast’s Motion to Dismiss on the merits.

PROCEDURAL BACKGROUND

This Court granted Comcast’s Motion to Dismiss Entropic’s First Amended Complaints (FACs) in both cases on November 20, 2023 and ordered Entropic to file any amended complaints purporting to plausibly allege willful infringement by December 8, 2023. C.A. 2:23-cv-1050, Dkt. 121; 2:23-cv-1048, Dkt. 132. The Court further ordered Comcast to file any renewed motion to dismiss by December 29, 2023. *Id.*

Pursuant to the Court’s order, Entropic filed Second Amended Complaints (SACs) in both the 1049 and 1043 cases on December 8, 2023. *See* 1049 Dkt. 128; 1043 Dkt. 190. Both SACs contained amended willfulness allegations, including “post suit” willfulness allegations based on the earlier complaints in these cases and Entropic’s subsequent litigation conduct. 1043, Dkt. 192-1 at ¶¶ 159-178; 1049, Dkt. 128 at ¶¶ 163-182. In addition, the SAC in the 1049 case asserted two new patents—U.S. Patent Nos. 11,785,275 (“the ’275 Patent”) and 9,866,438 (“the ’438 Patent”) (collectively

1 “the Newly Asserted Patents”). Along with the SACs, Entropic filed a Motion to
2 Supplement in each of the cases to seek leave to add its post-suit willfulness allegations.
3 1043, Dkt. 193; 1049 Dkt. 131.

4 On December 15, 2023, Comcast filed an Opposition to Entropic’s Motion to
5 Supplement, primarily on the ground that adding allegations of post-suit willfulness is
6 futile because such allegations cannot support Entropic’s willful infringement claims as
7 a matter of law.¹ 1043, Dkt. 201; 1049, Dkt. 136. That same day, Entropic filed a series
8 of notices and motions seeking to address procedural issues concerning its SACs.
9 Specifically, Entropic filed a “Notice of Errata” noting a purported error in wording in
10 both SACs and acknowledging that it erroneously included the two Newly Asserted
11 Patents in the 1049 case before obtaining leave to do so. *Id.* (1043, Dkt. 204). Entropic
12 also filed “Corrected SACs” that fixed the wording error and omitted the Newly
13 Asserted Patents in the 1049 case. (1049, Dkt. 140). Entropic then filed a Third
14 Amended Complaint in the 1049 case including the Newly Asserted Patents along with
15 a Motion to Amend seeking leave for their addition. 1049. Dkt. 145-1; Dkt. 143.² Thus,
16 despite procedural complications, the “Corrected” SACs and the “Third Amended
17 Complaint” contain the same substantive allegations as the initial SACs.

18 Comcast filed a Notice of Non-Opposition to Entropic’s Motion to Amend on the
19 grounds that Comcast would address in its forthcoming motion to dismiss why the
20 Newly Asserted Patents must be dismissed with prejudice along with the others. (1049,
21 Dkt. 165). Comcast then filed its Motion to Dismiss all permutations of Entropic’s
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23 ¹ Comcast also opposed the Motion to Supplement on the grounds that Entropic’s
24 post-suit willfulness allegations were untimely insofar as they could have been
25 included in the FACs and that Comcast would be prejudiced by Entropic’s proposed
26 supplementation because Entropic had unnecessarily delayed resolution of cases that
27 never should have been brought in the first place.

28 ² Entropic had previously filed a Motion to Amend to add the Newly Asserted Patents
to the 1049 case on November 13, 2023, (1049, Dkt. 115), and its December 15 filing
was styled as an Amendment to that Motion to Amend. (1049, Dkt. 143).

1 complaints on December 29, 2023, consistent with the Court's order. 1043, Dkt. 249;
2 1049, Dkt. 175. Comcast's motion addressed all of the substantive deficiencies in
3 Entropic's various complaints, including all of the allegations Entropic sought to add
4 through its various procedural motions to amend, correct, and supplement. As a result,
5 the futility of Entropic's post-suit willfulness allegations and its allegations regarding
6 the Newly Asserted Patents are now before the Court as part of Comcast's pending
7 Motion to Dismiss.

8 **OBJECTION**

9 On January 12, 2024, this Court referred Entropic's Motion to Supplement (1043,
10 Dkt. 193; 1049 Dkt. 131) and Motion to Amend (1049, Dkt. 115, 143) to the Special
11 Master. (1043, Dkt. 273; 1049, Dkt. 191). The Court then postponed its hearing on
12 Comcast's Motion to Dismiss until March 1, 2023, which could result in the Special
13 Master addressing the referred motions before the Court addresses Comcast's motion.
14 However, the referred motions do not present any issues for the Special Master to decide
15 at all, let alone before the Court addresses the merits of Comcast's Motion to Dismiss.

16 First, Comcast filed a non-opposition to Entropic's Motion to Amend, noting that
17 Comcast would address in its Motion to Dismiss why the Newly Asserted Patents must
18 be dismissed with prejudice along with all the others. (1049, Dkt. 165). Comcast then
19 filed that Motion to Dismiss, which addresses all of Entropic's allegations concerning
20 those patents. (1043, Dkt. 256, at 26-28; 1049, Dkt. 180, at 26-28). There is thus
21 nothing left concerning the Motion to Amend to be decided.

22 Second, while Comcast opposed Entropic's Motion to Supplement to add post-
23 suit willfulness allegations regarding all of the asserted patents, its principal argument
24 was that Entropic's post-suit allegations could not support a claim for willful
25 infringement and the supplementation was therefore futile. 1043, Dkt. 201, at 8-16;
26 1049, Dkt. 136, at 8-16 (arguing that a motion to supplement should be denied where
27 the amendment would be "futile," which occurs when "the amended complaint would
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1 be subject to dismissal”). Comcast then addressed Entropic’s post-suit willfulness
 2 allegations in its Motion to Dismiss, explaining again why they must be dismissed as
 3 insufficient as a matter of law. 1043, Dkt. 256, at 21-36; 1049, Dkt. 180, at 21-36.
 4 Accordingly, the central issue in the Motion to Supplement goes directly to the merits
 5 of Entropic’s willfulness claims and collapses into one of the central questions the Court
 6 must decide as part of Comcast’s Motion to Dismiss.

7 The Special Master in these cases was appointed to resolve discovery disputes,
 8 not dispositive legal motions, such as motions to dismiss. 1048, Dkt. 25 (“These cases
 9 will likely generate a substantial number of discovery disputes. For that reason, the
 10 Court is considering appointing a Special Master to assist the Court in managing and
 11 deciding discovery matters . . .”); 1048, Dkt. 26 (Plaintiff and Comcast both “consent
 12 to the appointment of a special master in this matter for discovery purposes”); 1048,
 13 Dkt. 78 (*Joint Stipulation to Request Appointment of David Keyzer, Esq., as Special*
 14 *Master for Discovery Purposes*) (“the Parties hereby stipulate to request an order
 15 appointive David Keyzer as Special Master for purposes of discovery.”).³ Moreover,
 16 the Ninth Circuit has held that issues that relate to liability—such as the sufficiency of
 17 Entropic’s willfulness allegations—are properly decided by the district court and not a
 18 special master. *See Castenada*, 264 F.R.D. at 569-570. That is because “[l]itigants are
 19 entitled to a trial by the court, in every suit, save where exceptional circumstances are
 20 shown,” and “[c]ourts have tended to read Rule 53 narrowly, closely circumscribing the
 21 range of circumstances in which reference to a master is appropriate.” *Id.* at 569-570

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 24 ³ Although the order appointing the Special Master contains a provision for matters
 25 that the Court decides to refer, those matters necessarily cannot include dispositive
 26 motions, such as Comcast’s Motion to Dismiss. 1043, Dkt. 74; 1050, Dkt. 90;
 27 *Castenada v. Burger King Corp.*, 264 F.R.D. 557 (9th Cir. 2009). Because the futility
 28 questions presented in the referred motions raise the same legal issues that this Court
 has to decide in resolving Comcast’s Motion to Dismiss, the Court’s referral
 effectively amounts to a referral of the Motion to Dismiss’s dispositive legal issue.

1 (citing *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256 (1957) and *Burlington Northern*
2 *v. Department of Revenue*, 934 F.2d 1064, 1071 (9th Cir.1991)).

3 Further, if the Special Master were to consider Entropic's Motion to Supplement
4 and rule on whether Entropic's post-suit allegations are futile, that decision would then
5 be subject to "relitigation" by this Court under a *de novo* standard of review. *Id.* at 570
6 (citing Fed. R. Civ. P. 53(f)). Thus, referring the motion to the Special Master brings no
7 efficiencies and simply requires the parties to engage in additional rounds of briefing
8 and argument before a different adjudicator who is not permitted to make a final ruling.
9 Such a process almost certainly would result in further delay, during which time
10 Comcast (and Entropic) will continue to incur significant litigation costs while awaiting
11 a substantive decision by this Court.⁴

12 Because Comcast's Motion to Dismiss substantively addresses all of the
13 allegations in Entropic's various complaints, the Special Master need not decide at this
14 time any of the procedural issues raised by Entropic's various motions. Instead,
15 Comcast respectfully submits that the most efficient, and proper, course is for the Court
16 to withdraw its referrals on those motions and proceed to argument on Comcast's
17 Motion to Dismiss, the resolution of which will determine whether any of Entropic's
18 procedural motions will still bear on this case. Alternatively, Comcast respectfully
19 requests that the Court delay its referrals until after it has decided Comcast's Motion to
20 Dismiss so as to ensure that the Special Master does not rule on the dispositive matters
21 properly before the Court.

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27 ⁴ Indeed, Entropic continues to propound burdensome discovery requests on Comcast,
28 including 99 requests for production in the 1049 case alone, far exceeding the Court
ordered limit of 75.

1 Dated: January 24, 2024

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